

**RULES  
OF  
TENNESSEE PUBLIC SERVICE COMMISSION  
DIVISION OF RAILROAD REGULATION**

**CHAPTER 1220-3-1  
RULES AND REGULATIONS GOVERNING RAILROADS**

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**1220-3-1-.01 RESERVED.**

*Authority:* T.C.A. §65-2-102. *Administrative History:* Original rule certified May 9, 1974. Rule has been assigned a new control number, removed, and renumbered to 1680-12-2-.01 filed and effective January 16, 2002.

**1220-3-1-.02 REPEALED.**

*Authority:* T.C.A. §65-2-102. *Administrative History:* Original rule certified May 9, 1974. Repeal by Public Chapter 440; effective July 1, 1985.

**1220-3-1-.03 RESERVED.**

**Authority:** T.C.A. §§65-3-104 and 65-3-107. **Administrative History:** Original rule filed August 26, 1988; effective November 29, 1988. Rule has been assigned a new control number, removed, and renumbered to 1680-12-2-.02 filed and effective January 16, 2002.

**1220-3-1-.04 TRANSPORTATION OF HAZARDOUS MATERIALS, EXPLOSIVES, AND OTHER DANGEROUS ARTICLES.** The Tennessee Public Service Commission hereby adopts the rules and regulations and any amendments, supplements or revisions thereto contained in the Department of Transportation, Materials Transportation Bureau as adopted by the D.O.T., 49 Code of Federal Regulations, Sub-chapter B, Parts 106, 107, 108 -169, and Sub-chapter C, Parts 170, 171, 172, 173, 174, 178, 179, and 180-189. (C.F.R, 49, Transportation, Parts 100 to 199, Revised Dec 31, 1976 and all supplements, revisions and amendments thereto).

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule certified May 9, 1974. Amendment filed November 30, 1977; effective December 30, 1977.

**1220-3-1-05 REPEALED,**

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule certified May 9, 1974. Amendment filed July 20, 1979; effective September 3, 1979. Repeal filed July 18, 1983; effective October 14, 1983.

**1220-3-1-06 DISCONTINUANCE OR ALTERATION OF SERVICE.**

- (1) No common carrier by rail rendering Service to the public of any nature subject to the jurisdiction of this Commission shall discontinue, suspend or alter such service unless and until the following conditions precedent shall have been met:
  - (a) Notice shall be posted in either printed or typewritten form in the most conspicuous place reasonably accessible to the general public at each place of business, station or stop therefore utilized, stating briefly and specifically the proposed change in service and advising the general public of its right to protest said change by contacting the Tennessee public Service Commission, Nashville, Tennessee.
  - (b) The above described notice shall be maintained in good and readable condition for a period of thirty (30) days prior to the holding of a hearing or the issuance of an order by the Commission.
  - (c) Copies of the above required notice shall be filed with the Secretary to the Commission within ten (10) days after the posting of same together with a statement showing the date and place of the posting of same.
  - (d) Notice shall also be given to the general public in the affected area of the proposed changes in service through advertisement in at least one issue of a newspaper of general circulation in each county theretofore served.
  - (e) This notice shall contain the same general essentials as prescribed in (1)(a).
  - (f) Copies of this newspaper notice shall be filed with the Secretary to the Commission in the manner provided in (1)(b).
- (2) In addition to the requirements above stated, any public utility by rail desiring to discontinue, suspend or alter the service theretofore rendered shall file with the Commission in writing its petition requesting such authority, stating in detail the areas affected and the reasons for the request.
  - (a) This request shall meet with the requirements prescribed for the filing and hearing of other requests to the extent such rules are not in conflict with rule 1220-3-1-.06.

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule certified May 9, 1974.

(Rule 1220-3-1-.07, continued)

**1220-3-1-.07 DEMURRAGE ON RAILROADS.**

- (1) Rules applicable to demurrage on railroads will be as set forth and defined in:
- (2) Car Demurrage Rules and Charges, ICC-H-8 Freight Tariff 4E, H.R. Hinsch, Agent, issued May 26, 1961, effective July 9, 1961, and Car Demurrage Rules and Charges, ICC-H-10 Freight Tariff 8-L, H.R. Hinsch, Agent, issued December 28, 1961, effective February 1, 1962, which are hereby adopted by the Tennessee Public Service Commission, together with all amendments thereto.

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule certified May 9, 1974.

**1220-3-1-.08 FREIGHT CLASSIFICATIONS, RATINGS, RULES AND REGULATIONS.** The Tennessee Public Service Commission hereby adopts the rules and regulations and any amendments thereto contained in Uniform Freight Classification 6. Ratings, Rules and Regulations, issued June 1, 1961, effective August 1, 1961, published by R.E. Boyle, Jr., Tariff Publishing Officer for Carriers in the Southern Classification, Atlanta 3, Georgia, provided, however, that nothing contained in Uniform Freight Classification 6 shall prohibit or prevent the Tennessee Public Service Commission from suspending or canceling a tariff as provided elsewhere in these rules and regulations.

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule certified May 9, 1974.

**1220-3-1-.09 REPEALED.**

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule certified May 9, 1974. Repeal by Public Chapter 440; effective July 1, 1985.

**1220-3-1-.10 RESERVED.**

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule certified May 9, 1974. Rule has been assigned a new control number, removed, and renumbered to 1680-12-2-.04 filed and effective January 16, 2002.

**1220-3-1-.11 RESERVED.**

**Authority:** T.C.A. §63-202. **Administrative History:** Original rule certified May 9, 1974. Rule has been assigned a new control number, removed, and renumbered to 1680-12-2-.05 filed and effective January 16, 2002.

**1220-3-1-.12 RESERVED.**

**Authority:** T.C.A. §63-202. **Administrative History:** Original rule certified May 9, 1974. Rule has been assigned a new control number, removed, and renumbered to 1680-12-2-.06 filed and effective January 16, 2002.

**1220-3-1-.13 STATE STATISTICAL INFORMATION - TO BE FILED BY RAILROADS:**

- (1) Every commercial railroad operating within the, State of Tennessee, and subject to the jurisdiction of the Public Service Commission, shall file with this Commission, on or before April 1, of each year, for the preceding year, Schedules 611, 720, 811, 931, 912, contained in the State statistical section of the Annual Report to the Interstate Commerce Commission, and any subsequent or amended schedules that may hereafter be adopted in the State statistics portion of the Annual Report to the Interstate Commerce Commission.

**Authority:** T.C.A. §65- 202, 4-509, and 65-304. **Administrative History:** Original rule filed August 22, 1978; effective October 6, 1978.

**1220-3-1-.14 THROUGH 1220-3-1-.19 RESERVED.****1220-3-1-.20 COMPLIANCE WITH STAGGERS FAIL ACT POLICY**

- (1) Public Law 96-448, "The Staggers Rail Act of 1980", requires the states which wish to retain jurisdiction to bring their standards and procedures for regulating railroad rates, classifications, rules and practices into conformity with the Interstate Commerce Act. It is the intent of Congress that railroad companies receive adequate revenues through regulatory encouragement of modal competition, rate flexibility, and relaxed rate reasonableness standards.
- (2) Mindful of this Commission's obligation to safeguard the public's interests, it shall henceforth be the policy of the Tennessee Public Service Commission to regulate railroad matters in a manner consistent with the standards and procedures set forth by Congress in the Interstate Commerce Act. Rules 1220-3-1-.20 to 1220-3-1-.59 are adopted to conform the regulation of railroad matters by the Tennessee Public Service Commission to the standards and procedures of the Interstate Commerce Commission as required by 49 U.S.A. Section 11501 (b).

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

**1220-3-1-.21 DISCRIMINATION EXEMPTIONS**

- (1) Tennessee adopts the applicable provisions of 49 U.S.C. Section 10741 on discrimination. Tennessee shall not make a finding of discrimination if differences in rates, classifications, rules and practices result from differences in service provided.
- (2) Discrimination shall not be found to apply to the following sections of 49 U.S.C.:
  - (a) Sec. 10713-Contract rates, other than as provided for in subsection (d) (2) (B);
  - (b) Sec. 10705a-Surcharges or cancellations;
  - (c) Sec. 10728-Separate rates for distinct rail services;
  - (d) Rail rates applicable to different routes; or
  - (e) Sec. 10751-Business entertainment expenses.

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

**1220-3-1-.22 ADOPTION OF FEDERAL STANDARDS.** The Tennessee Public Service Commission hereby adopts the following sections of the Interstate Commerce Act as amended by Staggers Rail Act of 1980.

Section 10505	-Exemption
Section 10701a	-Standards for rates for rail carriers
Section 10704a (2) - (4)	-Adequate revenues
Section 10705	-Authority: through routes, joint classifications, rates, and divisions
Section 10705a	-Joint rate surcharges and cancellations
Section 10706	-Rate agreements; exemption from antitrust laws
Section 10707	-Investigation and suspension of rates
Section 10707a	-Zone of rail carrier rate flexibility
Section 10709	-Determination of market dominance

(Rule 1220-3-1-.22, continued)

Section 10712	-Inflation-based rate increases
Section 10713	-Contracts
Section 10726	-Long and short haul transportation
Section 10730	-Rates mid liability based on value
Section 10731e	-Transportation of recyclable materials
Section 10741	-Rate discrimination
Section 10751	-Business entertainment expenses
Section 10762	-General tariff requirements

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

### 1220-3-1-.23 NOTICE PERIOD FOR FILING RAILROAD TARIFFS

- (1) Except as otherwise provided in paragraphs (c) and (d), the notice period for filing railroad tariffs with the Tennessee Public Service Commission which contain new or changed rates, classifications, rules, practices or other provisions shall be as follows:
  - (a) The tariff shall be on file with this Commission at least 20 days prior to its effective date for rates or provisions published in connection with new service or changes resulting in increased rates or decreased value of service.
  - (b) The tariff shall be on file with this Commission at least 10 days prior to its effective date for changes resulting in decreased rates or increased value of service, or changes resulting in neither increases nor reductions.
  - (c) The tariff shall be on file with this Commission at least 45 days prior to its effective date for joint rate surcharges and cancellations filed Pursuant to the provision of 49 U.S.C. Sec. 10705a.
  - (d) Railroad contracts shall be filed with this Commission pursuant to Rule 1220-3-1-.56.

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

### 1220-3-1-.24 CONTENT OF NOTICE

- (1) Each rate publication filed with the Commission shall be on forms prescribed by the Commission and shall contain such information as the Commission may require, including but not limited to:
  - (a) A tariff containing all relevant and material provisions relating to the rate and its application.
  - (b) A statement of the effect which the rate shall have on the carrier's revenue (increase, decrease, no change).

**Authority:** T.C.A. §63-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

**1220-3-1-.25 CONSEQUENCE OF DEFECT IN NOTICE.** No rate shall be considered published under the provisions of the Staggers Act unless notice has been given in compliance with Rule 1220-3-1-.24. However, if a tariff is filed and becomes effective despite some defect, the rates, charges, fares, classifications, rules, etc., in that tariff are in effect and will be applied until cancelled or amended or until they are stricken from the files by the Tennessee Public Service Commission.

**Authority:** T.C.A. §63-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

**1220-3-1-.26 COMMENCEMENT OF INVESTIGATION PROCEEDINGS**

- (1) When a new individual or joint rate (except general late increases, inflation-based increases, or fuel adjustment surcharges filed under the provisions of 49 U.S.C. Sec. 11501 (b) (6) over which the Tennessee Public Service Commission has no jurisdiction) or all individual or joint classification, rule, or practice related to a rate is filed with the Tennessee Public Service Commission by a rail earlier the Commission may;
  - (a) on its own initiative, commence an investigation proceeding, or
  - (b) upon protest of an interested party commence an investigation proceeding, or
  - (c) upon protest of an interested party commence an investigation and suspension proceeding to determine whether the proposed rate, classification, rule or practice is discriminatory, unreasonable, or in any other way violates applicable law.
- (2) Rates based oil limited carrier liability may be published and filed with the Commission, Without prior approval, pursuant to 49 U.S.C. Sec. 10730. However, such rates will be subject to protest on grounds such as unreasonableness or nonconformance with the tariff publication requirements found in 49 CFR 1300.4 (i) (11).
- (3) The Commission shall give reasonable notice to interested parties before beginning a proceeding. However, the Commission may begin the proceeding without allowing an interested party to file an answer.

**Authority:** T.C.A. §63-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

**1220-3-1-.27 DURATION OF SUSPENSION PERIOD**

- (1) The Commission shall complete a proceeding commenced under Rule 1220-3-1-.26 within five months from the effective date of the proposed rate, classification, rule or practice except that if the Commission reports to the Interstate Commerce Commission that it cannot make a final decision within that time and explains the reason for the delay, it may then take an additional three months to complete the proceeding and make a final decision.
- (2) If the Commission does not render a final decision within the applicable time period the rate, classification, rule or practice shall become effective immediately or, if already in effect, shall remain in effect.
- (3) If a railroad makes a tariff filing to adjust an intrastate rate, rule or practice under 49 U.S.C. Sec. 11501 (d) to that of similar traffic moving in interstate commerce, and the Commission investigates or suspends such tariff filing, the carrier may apply to the Interstate Commerce Commission to review the matter if the Tennessee Public Service Commission has not acted with finality by the 120th day after the tariff was filed. If the carrier elects not to refer the matter to the Interstate Commerce Commission the Tennessee Public Service Commission may decide the issue within five months, as provided for in this rule.

**Authority:** T.C.A. §63-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

**1220-3-1-.28 GROUNDS FOR SUSPENSION**

- (1) The Commission may not suspend a proposed rate, classification, rule, or practice unless it appears from the specific facts shown by the verified statement of a person that:
  - (a) it is substantially likely that the protestant will prevail on the merits;
  - (b) without suspension, the proposed rate change will cause substantial injury to the protestant or the party represented by the Protestant; and
  - (c) because of the peculiar economic circumstances of the protestant, the provisions of Rule 1220-3-1-.33 of this rule do not protect the protestant.
- (2) The Commission may not suspend a proposed rate, classification, rule, or practice on its own motion.

**Authority:** T.C.A. §§65-2-102 and 65-3-104. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983. Amendment filed March 29, 1985; effective June 14, 1985.

**1220-3-1-.29 MARKET DOMINANCE IN AN INVESTIGATION PROCEEDING**

- (1) When the new individual or joint rate is alleged to be unreasonably high, the Commission within 90 days after the start of a proceeding under Rule 1220-3-1-26 shall determine whether or not the railroad proposing the rate has market dominance over the transportation to which the rate applies.
- (2) If the Commission finds that:
  - (a) the railroad proposing the rate has market dominance over the transportation to which the rate applies, it shall then proceed to determine whether or not the proposed rate exceeds a maximum reasonable level for that transportation.
  - (b) the railroad proposing the rate does not have market dominance over the transportation to which the rate applies, it shall not make a determination on the issue of reasonableness.
- (3) A finding by the Commission that the proposed rate has a revenue- variable cost percentage which is equal to or greater than the percentages found in 49 U.S.C. Sec. 10709 (d) (2) does not establish a presumption that:
  - (a) the railroad has or does not have market dominance over such transportation, or
  - (b) the proposed rate exceeds or does not exceed a reasonable maximum level.
- (4) Evidentiary guidelines for the determination of whether or not the railroad has market dominance over the transportation to which the rate applies shall be found in Rules 1220-3-1-.36 through 1220-3-1-.39.

**Authority:** T.C.A. §63-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

**1220-3-1-.30 REASONABLENESS IN AN INVESTIGATION PROCEEDING**

- (1) Except for nonferrous recyclables, the Commission shall evaluate the reasonableness of a rate only after market dominance has been established. In determining whether a rate is reasonable, the Commission shall consider among other factors, evidence of the following:
  - (a) the amount of traffic which is transported at revenues which do not contribute to going concern value and efforts made to minimize such traffic;



(Rule 1220-3-1-.30, continued)

- (b) the amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on such traffic can be changed to maximize the revenues from such traffic; and
  - (c) the carrier's mix of rail traffic to determine whether one commodity is paying an unreasonable share of the carrier's overall revenues.
- (2) Pursuant to the Interstate Commerce Commission's decision in Ex Parte 394, a rate on nonferrous recyclable material is presumed to be unreasonable when it is set at a revenue to variable cost ratio greater than 146%, or such other percentage prescribed by the Interstate Commerce Commission.

**Authority:** T.C.A. §63-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

### **1220-3-1-.31 BURDEN OF PROOF IN AN INVESTIGATION PROCEEDING**

- (1) General-The burden shall be on the protestant to prove the matters described in Rule 1220-3-1-.28.
- (2) Market Dominance:
  - (a) Jurisdiction-The respondent railroad shall bear the burden of showing that the Commission lacks jurisdiction to review the proposed rate because the rate produces a revenue-variable cost percentage that is less than the percentages found in 49 U.S.C. Sec. 10709. (d) (2). The railroad may meet its burden of proof by showing the revenue-variable cost percentage for that transportation to which the rate applies is less than the threshold percentage cited in 49 U.S.C. Sec. 10709 (d) (2). The protestant may rebut the railroad's evidence with a showing that the revenue -variable cost percentage is equal to or greater than the threshold percentage in 49 U.S.C. Sec. 10709 (d) (2).
  - (b) Intramodal and intermodal competition-The protestant shall bear the burden of demonstrating that there exists no effective intramodal or intermodal competition for the transportation to which the rate applies. Respondent railroad may rebut the protestant's showing with evidence that effective intramodal or intermodal competition exists.
  - (c) Product and geographic competition-If intramodal and intermodal competition is shown not to exist, the respondent railroad shall have the burden of proving that either product or geographic competition for the involved transportation does exist. The protestant shall then have the burden of proving that such competition is not effective.
- (3) Reasonableness;
  - (a) Rate Increases:
    - 1. Protestant's burden of proof-A party protesting a rate increase shall bear the burden of demonstrating its unreasonableness if such rate:
      - (i) is authorized under 49 U.S.C. Sec. 10707a; and
      - (ii) results in a revenue-variable cost percentage for the transportation to which the rate applies that is less than the lesser of the percentages described in clauses (i) and (ii) of 49 U.S.C. Sec. 10707a (e) (2) (A)
    - 2. Respondent's burden of proof. The respondent railroad shall bear the burden of demonstrating the reasonableness of a rate increase if such rate:

(Rule 1220-3-1-.31, continued)

- (i) is greater than that authorized under 49 U.S.C, Sec, 10707a, or
  - (ii) results in a revenue -variable cost percentage for the transportation to which the rate applies that is equal to or greater than the lesser of the percentages described in clauses (i) and (i) of 49 U.S.C. Sec. 10707a (e) (2) (A); and
  - (iii) the Commission initiates an investigation under 49 U.S.C. Sec. 10707.
- (b) **Rate Decreases.** A party protesting a rate decrease shall bear the burden of demonstrating that the rate does not contribute to going concern value of the railroad, and is therefore unreasonably low. A Party may meet its burden by making a showing that the rate is less than the variable cost for the transportation to which the rate applies.

**Authority:** T.C.A. §63-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

#### **1220-3-1-.32 ZONE OF RATE FLEXIBILITY IN AN INVESTIGATION PROCEEDING**

- (1) A rail carrier may raise any rate pursuant to the limitations described in 49 U.S.C. Sec. 10707a. Base rates increased by the quarterly rail cost adjustment factor will not be investigated or suspended. In addition, a railroad may increase any rate by 6% per annum (to a maximum of 18%) over the four year period following enactment of the Staggers Act. Thereafter, railroads not earning adequate revenues, as defined by the Interstate Commerce Commission, may raise rates 417, per year. Neither the 6% or 4% increase shall be suspended. If the increase results in a revenue to variable cost ratio that equals or exceeds 1857, (190% after October 1992) the Commission may investigate the rate either on its own motion or on complaint of an interested party;
- (2) In determining whether or not to investigate the rate this Commission shall consider:
  - (a) the amount of traffic which the railroad transports at revenues which do not contribute to going concern value and efforts made to minimize such traffic;
  - (b) the amount of traffic which contributes only marginally to fixed costs and the extent to which rates on such traffic can be changed to maximize the revenues from such traffic;
  - (c) the impact of the challenged rate on national energy goals;
  - (d) state and national transportation policy; and
  - (e) the revenue adequacy goals incorporated in the Interstate Commerce Act.

**Authority:** T.C.A. §63-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

#### **1220-3-1-.33 MONETARY ADJUSTMENTS FOR SUSPENSION ACTIONS**

- (1) **Rate Increases with No Suspensions-**In the event the Commission does not suspend but investigates a proposed rate increase under Rule 1220-3-1-.26, the Commission shall require the rail carrier to account for all amounts received under the increase until the Commission completes its proceedings under Rule 1220-3-1-.27. The accounting shall specify by whom and for whom the amounts are paid. When the Commission takes final action, it shall require the carrier to refund to the person for whom the amounts were paid that part of the increased rate found to be unreasonable, plus interest at a rate

(Rule 1220-3-1-.33, continued)

equal to the average yield (on the date that the “Statement of Monetary Adjustment”) if filed-see Rule 1220-3-1 -.60 of marketable securities of the United States Government having a duration of 90 days.

- (2) **Rate Increases with Suspension-**If a rate is suspended under Rule 1220-3-1-.26 and any portion of such rate is later found to be reasonable the carrier shall collect from each person using the transportation to which the rate applies the difference between the original rate and the portion of the suspended rate found to be reasonable for any services performed during the period of suspension, plus interest at a rate equal to the average yield (on the date that the “Statement of Monetary Adjustment”) is filed (see Rule 1220-3-1-.60) of marketable securities of the United States Government having a duration of 90 days.
- (3) **Rate Decreases with Suspension-**In the event the Commission suspends a proposed rate decrease under Rule 1220-3-1-.26 which is later found to be reasonable, the rail carrier may refund any part of the decrease found to be reasonable if the carrier makes the refund available to each shipper who participated in the rate, in accordance with the relative amount of such shipper’s traffic transported at such rate.

**Authority:** T.C.A. §63-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

#### **1220-3-1-.34 FILING PROCEDURES FOR A PROTEST**

- (1) **Liberal Construction-** Rule 1220-3-1-.17 (1)
- (2) **Definitions-**T.C.A. §4-5-102; Rule 1220-1-1-.04
- (3) **Communications.**
  - (a) The protest, reply or other pleadings relating to the proceeding will not be considered unless made in writing and filed with the Commission.
  - (b) The protest, reply, “Statement of Monetary Adjustment” or other pleadings shall be addressed to:

Tennessee Public Service Commission  
460 James Robertson Parkway  
Nashville, Tennessee 37219
  - (c) The protest, reply or other pleadings relating to the proceeding must be received for filing at the Commission within the time limits, if any, for such filing. The date of receipt at the Commission and not the date of deposit in the mails is determinative.
  - (d) If, after examination, the Commission finds that the protest, reply, “Statement of Monetary Adjustment” or other pleadings relating to the proceeding are not in substantial compliance with the provisions of these rules:
    1. The Commission may decline to accept the documents and may return them unfiled, or
    2. The Commission may accept the documents for filing and advise the party tendering it of the deficiencies and require that they be corrected.
- (4) **Signature and Verification.**
  - (a) The protest, reply or other pleadings relating to the proceeding shall be signed and the signer’s address shall be stated.

(Rule 1220-3-1-.34, continued)

- (b) The facts alleged in a protest, reply or other pleadings shall be verified by the person on whose behalf it is filed. If a protest, reply or other pleading is filed on behalf of a corporation or other organization, it shall be verified by an officer of such corporation or organization.
- (5) Copies and Service of Documents.
  - (a) Protest-The original and two copies shall be filed with the Commission and one copy shall be simultaneously served upon the publishing railroad or its publishing agent and upon other parties known by the protestant to be interested in the Proceeding.
  - (b) Reply to Protest-The original and two copies shall be filed with the Commission and one copy shall be simultaneously served upon the Protestant and upon the other parties named in the protest.
  - (c) Pleadings-The original and two copies shall be filed with the Commission and one copy shall be simultaneously served upon all parties to the proceeding.
- (6) Content and Timing
  - (a) Protest:
    - 1. Content:
      - (i) Identification-The protested tariff should be identified by making reference to the name of the railroad or its publishing agent, to the specific items or particular provisions protested and to the effective date of the protested publication-Reference should also be made to the tariff and specific provisions thereof that are proposed to be superseded.
      - (ii) Grounds for Suspension-The protest shall incorporate facts sufficient:
        - (I) to meet the criteria for suspension as set forth in Rule 1220-3-1-.28
        - (II) to sustain the applicable burdens of proof as set forth in Rule 1220-3 -1 - .31. Further, the protest should include any additional information that would support suspension of the proposed rate.
    - 2. Timing:

A protest against and a request for suspension of a tariff filed by a railroad or its publishing agent shall be received by the Commission at least:

      - (i) ten days prior to the effective date, when the proposed change is to become effective upon not less than 20 days notice;
      - (ii) five days prior to the effective date, when the proposed change is to become effective upon not less than 10 days notice.
  - (b) Reply to Protest
    - 1. Content-The reply should adequately identify the protested tariff. Further it shall contain sufficient facts to rebut the allegations made in the protest and to sustain the applicable burdens of proof as set forth in Rule 1220-3-1-.31.

(Rule 1220-3-1-.34, continued)

2. Timing-A reply to a protest must be received by the Commission not later than:
  - (i) the fourth working day prior to the effective date when the proposed change is to become effective upon not less than 20 days notice;
  - (ii) the second working day prior to the effective date when the proposed change is to become effective upon not less than 10 days notice.
- (c) Emergency Protests and Replies. In emergencies, telegraphic protests and replies are acceptable-only the telegram and the original signed verified copy need be filed with the Commission. The telegrams shall include Statements to the effect that they are copies of original protests or replies which have been signed, verified, and replies which have been signed, verified, and mailed to the Commission. The telegrams shall also indicate the method of verification (e.g., by statements sworn to before a notary public). The telegrams shall also include a certification that copies either have been, or will be immediately, telegraphed to the proponent carriers or their publishing agents in the case of protests, or to the protestants in case of replies.

**Authority:** T.C.A. §63-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

#### **1220-3-1-.35 REFUND OR COLLECTION OF FREIGHT CHARGES BASED UPON COMMISSION FINDINGS**

(1) Refund or Collection:

- (a) Except as otherwise provided in paragraph (b), when the Commission finds, pursuant to Rule 1220-3-1 .33, that a railroad shall make refunds on freight charges collected or that the railroad is entitled to collect additional freight charges, but the amount cannot be ascertained upon the record before it, the party entitled to the refund or the railroad entitled to collect additional monies, as the case may be, shall immediately prepare a statement showing details of the shipments involved in the proceeding, in accordance with Rule 1220-3-1-.60 (Statement of Monetary Adjustment). The statement shall not include any shipment not covered by the Commission's findings.
- (b) If the shipments moved over more than one route, a separate statement shall be prepared for each route and separately numbered, except that shipments as to which the collecting carrier is in each instance the same may be listed in a single statement if grouped according to routes.
- (c) The party entitled to the refund shall submit its statement, together with the paid freight bills on the shipments, or true copies thereof, to the carrier which collected the charges, for verification and certification as to its accuracy.
- (d) If the railroads are entitled to additional monies, the carrier collecting the initial freight charges shall prepare the statement for and on behalf of the involved carriers.
- (e) All discrepancies, duplications, or other errors in the statements shall be adjusted by the parties and corrected agreed statements submitted to the Commission.
- (f) The certificate shall be signed in ink by a general accounting officer of the carrier and shall cover all of the information shown in the statement.
- (g) If the carrier which collected the charges is not a respondent to the proceeding, its certificate shall be concurred in by like signature on behalf of a carrier named as a respondent in the proceeding.

(Rule 1220-3-1-.35, continued)

- (h) Statements so prepared and certified shall be filed with the Commission whereupon it shall consider entry of air order awarding refunds or collection of additional freight charges as the case may be,
- (2) Payment of Reparations by Railroad or Waiver of Monies Due to Railroad
  - (a) Communications - All communications shall be in writing and shall be addressed to:

Tennessee Public Service Commission  
Cordell Hull Building  
Nashville, Tennessee 37219
  - (b) Petitions to Pay Reparations or Waive Undercharges - If a railroad wished to pay reparations or to waive collection of undercharges because of charges made by the railroad which are unjust and unreasonable or not made in accordance with the railroad's tariff lawfully on file with the Commission, petitions for appropriate authority may be filed by the railroad with the Commission in the form of a Letter of Intent to Pay Reparations, a Letter of Intent to Pay Reparations and to Waive Undercharges or a Letter of Intent to Waive Undercharges. These petitions will be deemed the equivalent of a complaint and an answer admitting the matters stated in the petition. These petitions should contain the following information:
    - 1. The names and addresses of the complainants seeking damages.
    - 2. The names of the defendants against which the claim is filed.
    - 3. The amount of the claim.
    - 4. The tariff authority for both the assailed and the sought rate.
    - 5. The dates on which, or within which, the shipments moved and dates when the shipments were delivered or tendered for delivery.
    - 6. The points of origin and destination of the shipments and the routes of movement.
    - 7. The commodity.
    - 8. An admission by the carrier that the assailed rate was unreasonable, and a showing, where appropriate, that it has been removed from the tariff.
    - 9. A statement certifying that all defendants against which the claim is lodged concur in the intent to pay reparations or waive undercharges.
    - 10. A brief explanation of the circumstances causing the claim for damages and the precedent relied upon by the carrier in agreeing to honor it.
  - (c) Petition to Waive Collection of Insignificant Amounts
    - 1. Freight Charges in Excess of \$2000.00 - If a railroad wishes to waive collection of amounts due pursuant to rule 1220-3-1-.33, when such amounts are more than \$2,000.00, a petition for appropriate authority may be filed by the railroad, with the Commission, in the form of a Letter of Intent to Waive Insignificant Amounts. The petition should contain the following information:
      - (i) The name and address of the customer for whom the railroad wishes to waive collection.

(Rule 1220-3-1-.35, continued)

- (ii) The names and addresses of the railroads involved in the intended waiver and statement certifying that all railroads concur in the action.
- (iii) The amount intended to be waived.
- (iv) The number of the investigation and suspension docket involved, the beginning and ending dates of the suspension period, and any other pertinent tariff information.
- (v) The points of origin and destination of the shipments and the routes of movement, if relevant.
- (vi) A brief statement of justification for the intended waiver, including the anticipated costs of billing, collecting and/or litigating if the waiver is not permitted.
- (vii) When certification is necessary pursuant to (ii) above, it should be in the following format: The (name of petitioning railroad) hereby certifies that it holds the written concurrence of all of the railroads named in this petition. By its (petitioner's title) Dated at \_\_\_\_\_ this \_\_\_\_\_ day of 19\_\_\_\_\_.

\_\_\_\_\_  
(petitioner's signature)

- 2. Freight Charges \$2000.00 or Less - If the amount to be waived is \$2,000.00 or less, no petition need be filed prior to waiver of monies due, provided that this exemption may be invoked by the railroad only once for any person who uses the original rate during the suspension period. However, a Letter of Disposition informing the Commission of the investigation and suspension docket number, the action taken, the date of the action and the amount of monies due that were waived shall be submitted to the Commission within 30 days of the waiver.
- (d) Public Notice - Petitions to pay reparations, waive the collection of undercharges, or to waive collection of insignificant amounts will be made available by the Commission for public inspection on date of receipt, in the Executive Director's Office.
- (e) Contested Petitions - Any interested person may protest the waiver of monies due and such protest shall be filed with the Commission within 30 days of the Commission's receipt of the railroad's Letter of Intent to Waive Insignificant Amounts. If the protest is not filed within the 30 day period, it will not be considered as being timely filed. The protest should be in the form of a Letter of Objection and shall identify the investigation and suspension docket number, shall clearly state the reasons for objection and shall certify that a copy of a Letter of Objection has been served on all parties named in the Letter of Intent to Waive Insignificant Amounts. Replies to a Letter of Objection shall be filed no later than the 45th day after the Commission's receipt of the Letter of Intent to Waive Insignificant Amounts. If the reply to the protest is not filed within 45 day period, it will not be considered as being timely filed. If the Letter of Objection is timely filed, the Commission will consider the Letter of Intent to Waive Insignificant Amounts as being contested. The Commission will notify all parties to the proceeding that the petition is contested and the railroad shall not be allowed to take any further action until the Commission makes its findings and enters an appropriate order granting or denying the petition to waive monies due. Further, the filing of a Letter of Disposition with the Commission will not be required.
- (f) Uncontested Petitions - A petition which is not contested shall be considered an order of the Commission authorizing the action contemplated in the petition 45 days after the Commission's receipt of the petition. Within 30 days after the expiration of the 45 day period, the railroad filing

(Rule 1220-3-1-.35, continued)

the petition shall file a Letter of Disposition informing the Commission of the action taken, the date of the action and the amount of monies waived.

**Authority:** T.C.A. §65-2-102 and 65-3-104. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983. Amendment filed March 29, 1985; effective June 14, 1985.

#### **1220-3-1-.36 INTRAMODAL COMPETITION.**

- (1) Intramodal competition refers to competition between two or more railroads transporting the same commodity between the same origin and destination. A shipper has rail alternatives when, for a given purpose, he can be served by more than one railroad or combination of different railroads. The degree to which these alternatives compete with one another depends on such factors as:
  - (a) the number of rail alternatives;
  - (b) the feasibility of each alternative as evidenced by:
    1. physical characteristics of the route associated with each alternative that are indicative of the feasibility of using that alternative for the traffic in question (e.g., circuitry, track conditions, etc.); and
    2. the direct access of both the shipper and the receiver to each of the rail alternatives as evidenced by individual rail sidings, neutral terminal companies or reciprocal switching; or if direct access is not available, then the feasibility of using local trucking to transport the commodity to or from terminals;
  - (c) the transportation costs associated with each alternative (to determine if actual use of alternatives is due to excessive rates charged by the rail carrier in question);
  - (d) collective ratemaking among the railroad in question as evidenced by rate bureau involvement; and
  - (e) evidence of substantial rail-related investment or long-term supply contracts (more weight will be given these contracts if made prior to October 1, 1980).

These factors should be considered in connection with the preparation and submission of evidence pertaining to the presence or absence of effective intramodal competition. This list is neither exhaustive nor mandatory but provides a general indication of the type of evidence that would be appropriate.

**Authority:** T.C.A. §63-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

#### **1220-3-1-.37 INTERMODAL COMPETITION**

- (1) Intermodal competition refers to competition between rail carriers and other modes for the transportation of a particular product between the same origin and destination. Motor and water carriage are the main sources of intermodal competition for railroads.
  - (a) Water Carriage-Water carriage is restricted to certain geographic areas and is generally used for commodities moving in bulk. The evidence required to demonstrate effective competition between rail and water alternatives is in many respects similar to that required for intramodal competition among rail carriers. Parties in a rate case should provide evidence along the following lines:



(Rule 1220-3-1-.37, continued)

1. the number of alternatives involving different carriers;
2. the feasibility of each alternative as evidenced by:
  - (i) pertinent physical characteristics, for the product in question, of the transportation or routing associated with each alternative;
  - (ii) the access of both the shipper and receiver to each alternative; and
3. the transportation costs of each alternative.

Again, these factors are not exhaustive.

- (b) Motor Carriage -Unlike rail or water alternatives, the availability of many motor carrier alternatives for transportation services between two points can, in most instances, be taken for granted. Therefore, the feasibility of using motor carriage as an alternative to rail may be viewed as depending exclusively On the nature of the product and the needs of the shipper or receiver. Effective competition from motor carriage may be deducted from the following types of evidence:

1. the amount of the product in question that is transported by motor carrier where rail alternatives are available;
2. the amount of the product that is transported by motor carrier under transportation circumstances (e.g., shipment size and distance) similar to rail;
3. physical characteristics of the product in question that may preclude transportation by motor carrier; and
4. the transportation costs of the rail and motor carrier alternatives.
5. the amount Of the product that is transported using motor carrier by shippers with similar needs (distributed, inventory, et cetera) as the shipper protesting the rate.

Other types of evidence on the feasibility or nonfeasibility of motor carriage as an alternative to rail will also be considered.

**Authority:** T.C.A. §63-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

#### 1220-3-1-.38 GEOGRAPHIC COMPETITION

- (1) Geographic competition may be described as a restraint on rail pricing stemming from a shipper's or receiver's ability to get the product to which the rate applies from another source, or ship it to another destination. Because shippers and receivers can do this, the railroad must compete with the railroad serving the alternate source or destination. Geographic competition among rail carriers is nontrivial for commodities in which transportation costs account for a substantial portion of the delivered price. To establish the potential for geographic competition, evidence should be submitted concerning the following:
  - (a) the number of alternative geographical sources of supply or alternative destinations available to the shipper Of receiver for the product in question,
  - (b) the number of these alternative sources of destinations served by different carriers; and

(Rule 1220-3-1-.39, continued)

- (c) that the product available from each source or required by each destination is the same.
- (2) Such evidence is sufficient only to indicate whether effective geographic competition is possible. To determine whether effective geographic competition actually exists, evidence showing the feasibility of each source or destination and the likelihood of competition should be presented. This evidence may be as follows:
  - (a) the distance associated with each alternative source or destination;
  - (b) relevant physical characteristics of the route associated with each alternative;
  - (c) the access of the shipper or receiver to each transportation alternative;
  - (d) the capacity of each source to supply the product in question or the capacity of each destination to absorb the product in question;
  - (e) the transportation costs associated with each alternative;
  - (f) collective ratemaking among the railroads in question as evidenced by rate bureaus; and
  - (g) evidence of substantial rail-related investment or long-term supply contracts (more weight will be given these contracts if made prior to October 1, 1980).

It is to be emphasized that these guidelines are not intended to encompass all pertinent evidence.

**Authority:** T.C.A. §63-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

### **1220-3-1-.39 PRODUCT COMPETITION**

- (1) Product competition occurs when a receiver or shipper can use a substitute(s) for the product covered by the rail rate. In that case, the railroad must compete with the railroad or other mode which carries that other product. and again, must keep its rate competitive if it wants the traffic. Evidence as to the existence of product competition should reflect the availability the shipper or receiver of feasible substitutes and show that these substitutes can be obtained through the use of other carriers or modes without substantially greater cost, transportation or otherwise. To demonstrate whether a feasible substitute exists, the following types of evidence, among others, may be submitted:
  - (a) use of a substitute product(s) by the receiver or shipper in question or by others with similar needs and under similar conditions;
  - (b) the prices of the substitute product(s) relative to the product in question;
  - (c) the efficiency of the substitute product(s) relative to the product in question; and
  - (d) the explicit and implicit transportation costs of the substitute product(s) and the product in question.

The above factors are not intended to be exhaustive.

**Authority:** T.C.A. §63-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

(Rule 1220-3-1-.39, continued)

**1220-3-1-.40 COMPLAINTS AGAINST REASONABLENESS OF RAILROAD RATES**

- (1) Complaints
  - (a) General Allegation-Rule 1220-3-1-.05 (c)
  - (b) Tariff or Schedule References-The several rates, charges, schedules, classifications, regulations, or practices on which complaint is made shall be set out by specific reference to the tariffs or schedules in which they appear, whenever that is feasible
  - (c) Prayer for Relief-Rule 1220-1-1-.05 (d)
- (2) Copies-Rule 1220--1-1-.18
- (3) Answers to Complaints-Rule 1220-1-1-.11
- (4) Informal Settlement of Complaint-If a defendant satisfies a formal complaint, either before or after answering, a statement to that effect signed by the opposing parties shall be filed (only original need be filed), setting forth when and how the complaint has been satisfied. This action should be taken as expeditiously as possible.
- (5) Signature-The complaint, answer or other pleadings to a complaint proceeding shall be signed and the signer's address shall be stated.
- (6) Verification-The facts alleged in a complaint, answer or other pleadings shall be verified by the person on whose behalf it is filed. If a complaint, answer or other pleading is Filed on behalf of a corporation or other organization, it shall be verified by an officer of such corporation or organization.
- (7) Zone of Rate Flexibility

Base rates increased by the quarterly rail cost adjustment factor may not be found to exceed a reasonable maximum for the transportation involved. Complaints against rate increases effected under subsections (c) and (d) of 49 U.S.C. Sec. 10707a shall be considered pursuant to provisions of subsection (e) of said Section.
- (8) Market Dominance
  - (a) The Commission shall determine within 90 days of the start of a complaint proceeding whether the Carrier has market dominance over the transportation to which the rate applies- If the Commission finds that the carrier has market dominance, it may their determine that rate to be unreasonable if it exceeds a reasonable maximum for that transportation. In making a determination of market dominance, the Commission shall find that the rail carrier establishing the challenged rate does not have market dominance over the transportation to which the rate applied if the fail carrier proves that the rate charged results in a revenue-variable cost percentage which is less than that stated in 49 U.S.C. See. 10709 (d) (2).
  - (b) Evidentiary guidelines for the determination of whether the railroad market dominance Over the transportation to which the rate applies shall be found in Rules 1220-3-1 -36 through 1220-3-1-.39.
  - (c) If the Commission determines that a rail carrier does not have market dominance over the transportation which a particular rate applies, the rate established by such carrier for such transportation shall be reasonable.

(Rule 1220-3-1-.40, continued)

(9) Reasonable Rates.

- (a) Rail rates shall not be established below a reasonable minimum. Any rate for transportation by a rail carrier that does not contribute to the going concern value for such carrier is presumed to be not reasonable.
- (b) Rail rates which equal or exceed the variable cost of providing the transportation are conclusively presumed to contribute to the going concern value of the rail carrier, and therefore presumed not to be below a reasonable minimum.
- (c) In determining whether a rate is reasonable, the Commission shall consider the policy that railroads earn adequate revenues as well as evidence of the following:
  - 1. the amount of traffic which is transported at revenues which do not contribute to going concern value and efforts made to minimize such traffic;
  - 2. the amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on such traffic can be changed to maximize the revenues from such traffic; and
  - 3. the carrier's mix of rail traffic to determine whether one commodity is paying an unreasonable share of the carrier's overall revenues.

(10) Burden of Proof

- (a) Jurisdiction-The defendant railroad shall bear the burden of showing that the Commission lacks jurisdiction to review a rate because the rate produces a revenue-variable cost percentage that is less than the percentages found in 49 U.S.C. Sec. 10709 (d) (2). The railroad shall meet its burden of proof by showing the revenue-variable cost percentage for the transportation to which the rate applies is less than the threshold percentage cited in 49 U.S.C. Sec. 10709 (d) (2). A complainant may rebut the railroad's evidence with a showing that the revenue- variable cost percentage is equal to or greater than the threshold percentage cited in 49 U.S.C. Sec. 10709 (d) (2).
- (b) Reasonableness of Existing Rates:
  - 1. A party complaining that an existing rate is unreasonably high shall bear the burden of proving that such rate is not reasonable.
  - 2. A party complaining that an existing rate is unreasonably low shall bear the burden of demonstrating that the rate does not contribute to the going concern value of the carrier, and is therefore unreasonably low.
  - 3. Savings Provisions-Any interested party may file a complaint alleging that an intrastate railroad rate which was in effect on the effective date of the Staggers Act (October 1, 1980) is subject to market dominance under the provisions of 49 U.S.C. Sec- 10709 and is not reasonable under the provisions of 49 U.S.C. Sec. 10701a. Such complaint must have been filed with the Tennessee Public Service Commission within 180 days of the effective date of the Staggers Act, i.e., by March 30, 1981.

Any rate which is not challenged in a complaint filed by March 30, 1981, or which is challenged in such a complaint but (A) the rail carrier is found not to have market dominance over the transportation to which the rate applies, or (B) the rate is found to be

(Rule 1220-3-1-.40, continued)

reasonable, shall be deemed to be lawful and may not thereafter be challenged in the Commission or in any court other than an appeal from a decision of the Commission.

These provisions shall not apply to any rate under which the volume of traffic transported during the twelve month period immediately preceding the effective date of the Staggers Act did not exceed 500 net tons and has increased tenfold within the three year period immediately Preceding the bringing of a challenge to the reasonableness of such rate.

The complainant shall bear the burden of proving that a Tate in effect on October 1, 1980, as described in this section, is unreasonable.

(11) Nonapplicability

- (a) Complaints shall not be entertained by the Commission to the extent that they challenge the reasonableness of the Following rate adjustments:

1. general rate increases;
2. inflation-based rate increases; or
3. fuel adjustment surcharges.

**Authority:** T.C.A. §63-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

**1220-3-1-.41 CONTRACT DEFINITION**

- (1) A contract subject to these rules- is a written agreement, including any amendment, entered into by one or more rail carriers with one or more purchasers of rail services, to provide specified services under specified rates, charges, and conditions.
- (2) A contract filed under these rules shall:
  - (a) specify that the contract is made pursuant to 49 U.S.C. Sec. 10713, and
  - (b) be signed by duly authorized parties.
- (3) The term “amendment” includes written contract modifications signed by the parties.
- (4) An amendment is treated as a new contract. An amendment is lawful only if it is filed and approved in the same manner as a contract. To the extent terms affecting the lawfulness of the underlying contract are changed, remedies are revived and review is again available.

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

**1220-3-1-.42 CONTRACT FILING AND CONTRACT IMPLEMENTATION DATE**

- (1) Contract Filing - Rail carriers providing transportation subject to Subchapter 1 of Chapter 105 of Title 49, United States Code, shall file with the Commission an original and one copy of a contract entered into with one or more purchasers of rail service. The contract shall be accompanied by three copies of a summary of the nonconfidential elements of the contract in the format specified in 49 CFR §§1300.300-1300.315. A contract and contract summary (and amendments and supplements) may be rejected for non-compliance with applicable statutes and regulations.

(Rule 1220-3-1-.41, continued)

- (2) Contract Implementation Date - Transportation or service performed under a contract or amendment may begin, without specific Commission authorization, on or after the date the contract and contract summary or contract amendment and supplement are filed and before the Commission approval as defined at rule 1220-3-1-.47 subject to the following conditions:
- (a) The contract or contract amendment shall specifically state that the transportation or service may begin on the date of filing and that performance is subject to the conditions of Rule 1220-3-1-.47 (2). The contract summary or supplement shall separately reflect the date of commencement of service under this provision under “duration of the contract.” 49 CFR 1300.313 (a) (4).
  - (b) If the rail equipment standards of 49 U.S.C. 10713 (k) are exceeded, prior relief shall be obtained from the Commission and shall be specifically identified in the contract summary.
  - (c) If the Commission disapproves or rejects the contract or amendment, the appropriate noncontract tariffs or the contract provisions otherwise in effect under previously approved contracts and amendments will be applicable.
  - (d) Before Commission approval, the contract or amendment and transportation are subject to Commission jurisdiction and applicable regulations.
  - (e) Transportation or service may not begin under a contract or an amendment to a contract before the filing date of either the contract or the amendment, respectively.

**Authority:** T.C.A. §§65-2-102 and 65-3-104. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983. Amendment filed March 29, 1985; effective June 14, 1985.

**1220-3-1-.43 GROUNDS FOR REVIEW OF CONTRACT.** Within 30 days of the filing date of a contract, the Commission may, on its own motion or on complaint, begin a proceeding to review it. Such review shall be based only on an allegation of violations as described in Rule 1220-3-1-.44.

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

**1220-3-1-.44 GROUNDS FOR COMPLAINTS.** A contract may be reviewed by the Commission on its own motion, or upon complaint, only on the following grounds:

- (a) In the case of a contract other than a contract for the transportation of agricultural commodities (including forest products and paper), a complaint may be filed:
  - 1. By a shipper only on the grounds that the shipper individually will be harmed because the proposed contract unduly impairs the ability of the contracting carrier or carriers to meet common carrier obligations under 49 U.S.C. Sec. 11101; or
  - 2. By a port on the grounds that the port individually will be harmed because the proposed contract will result in unreasonable discrimination against that port.
- (b) In the case of a contract for the transportation of agricultural commodities (including forest products and paper), in addition to the grounds for a complaint described in Rule 1220-3-1-.46, a complaint may be filed by a shipper on the grounds that the shipper individually will be harmed because:
  - 1. The rail carrier(s) unreasonably discriminated by refusing to enter into a contract with the shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue and the shipper was ready, willing, and able to

(Rule 1220-3-1-.44, continued)

enter into such a contract at a time essentially contemporaneous with the period during which contract was offered; or

2. The proposed contract constitutes a destructive competitive practice.

- (i) “Unreasonable discrimination,” as used in these rules, means when applied to agricultural shippers, that the railroad has refused to enter into a contract with the shipper for rates and services for the transportation of the same type of commodity under similar conditions to the contract at issue, and that the shipper was ready, willing, and able to enter into such a contract at a time essentially contemporaneous with the period during which the contract at issue was offered; and, when applied to a port, has the same meaning as the term has under 49 USC § 10741.
- (ii) The definitions for “agricultural commodities,” “forest products” and “paper” will be decided on a case-by-case basis.

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

#### 1220-3-1-.45 FILING AND SERVICE OF COMPLAINTS

- (1) A complaint shall be filed with the Commission by the 18th day after the filing date of the contract.
- (2) A reply shall be filed by the 23rd day after the filing date of the contract.
- (3) An original and 6 copies of each shall be filed with the Commission.
- (4) A copy of the complaint shall be served on each rail road participating in the contract and replies shall be served on complainant. Complaints shall be served by hand, express mail or other overnight delivery service.
- (5) An appeal of a Commission decision is available in accordance with 49 CFR section 1100.200(c), subject to the following exception:
  - (a) an appeal must be made at least two work days prior to the contract section approval as set out in Rule 1220-3-1-.47

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

#### 1220-3-1-.46 COMMISSION DECISION UPON REVIEW OF CONTRACT

Within 30 days after the date a proceeding is commenced to review a contract upon the grounds specified in Rule 1220-3-1-.44, the Commission shall decide whether the contract violates the provisions of 49 USC § 10713. If the Commission finds that the contract violates the provision of 49 USC § 10713, it will:

- (1) disapprove the contract; or
- (2) in the case of agricultural contracts where the Commission finds unreasonable discrimination by a carrier it will, allow the carriers the option to:
  - (a) provide rates and services substantially similar to the contract at issue, with such differences in terms and conditions as are justified by the evidence; or
  - (b) cancel the contract.

(Rule 1220-3-1-.47, continued)

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

#### **1220-3-1-.47 APPROVAL DATE OF CONTRACT**

- (1) A contract shall be approved:
  - (a) If the Commission does not institute a proceeding to review the contract, it shall be approved on the 30th day after the filing of the contract. Such contract shall be considered “expressly approved” by the Commission.
  - (b) If the Commission institutes a proceeding to review a contract, the contract is approved:
    1. on the date the Commission approves the contract if the date of approval is 30 or more days after the filing date of the contract;
    2. on the 30th day after the filing date of the contract if the Commission denies the complaint against the contract prior to the 30th day after the filing date of the contract; or
    3. on the 60th day after the filing date of a contract, if the Commission fails to disapprove the contract.

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

#### **1220-3-1-.48 LIMITATION OF RIGHTS OF A RAIL CARRIER TO ENTER FUTURE CONTRACTS**

The Commission may limit the right of a rail carrier to enter into future contracts if it determines that additional contracts would impair the ability of the rail carrier to fulfill its common carrier obligations under 49 USC Sec. 11101. The Commission shall handle such determinations on a case-by-case basis and may investigate either on its own initiative or upon the filing of a verified complaint by a shipper which demonstrates that it individually had been harmed by a carrier’s inability to fulfill its common carrier obligations as a result of existing contracts.

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

#### **1220-3-1-.49 COMMON CARRIER RESPONSIBILITY**

- (1) The terms of a contract approved by the Commission determine completely the duties and service obligations of the parties to the contract with respect to the services provided under the contract. The contract does not affect the parties’ responsibilities for any services which are not included in the contract.
- (2) Service under a contract approved by the Commission is determined a separate and distinct class of service and the equipment used to fulfill the contract shall not be subject to car service decisions under 49 U.S.C. § 11123.

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

#### **1220-3-1-.50 ENFORCEMENT**



- (1) The exclusive remedy for an alleged breach of a contract approved by the Commission shall be an action in an appropriate state court or United States district court, unless the parties otherwise agree in the contract.
- (2) The Commission may not require a rail carrier to violate the terms of a contract that has been approved under Rule 1220-3-1-.47, except to the extent necessary to comply with 49 U.S.C. § 11128.

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

#### **1220-3-1-.51 LIMITATION ON AGRICULTURAL EQUIPMENT AND RELIEF**

- (1) A rail carrier may enter into contracts for the transportation of agricultural commodities (including forest products and paper) that involve the use of carrier owned or leased equipment not in excess of 40 percent of the total number of the carrier's owned or leased equipment, by major car type, except as provided in (b) below.
- (2) In the case of a proposed contract between a Class I carrier and a shipper originating an average of 1,000 cars or more per year during the prior three year period by major car type on a particular carrier, not more than 40 percent of carrier owned or leased equipment used on the average during the prior three year period may be used for such contract without prior authorization by the Commission.
- (3) The Commission may grant relief from the limitations of subparagraphs (a) and (b) above if:
  - (a) a rail carrier or other party requests such relief; or
  - (b) the Commission on its own initiative considers granting such relief; or
  - (c) the Commission determines that making additional equipment available does not appear to impair the rail carrier's ability to meet its common carrier obligations under 49 USC Sec. 11101(a).

**Authority:** T.C.A. §§65-2-102 and 65-3-104. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983. Amendment filed March 29, 1985; effective June 14, 1985.

#### **1220-3-1-.52 SPECIAL TARIFF RULES FOR CONTRACTS ENTERED INTO BY ONE OR MORE RAIL CARRIERS WITH ONE OR MORE PURCHASERS OR RAIL SERVICE.**

- (1) This paragraph, and the following paragraphs, govern the filing of contracts for railroad transportation service entered into by one or more rail carriers with one or more purchasers of rail service.
- (2) Contracts for railroad transportation services and contract summaries shall be filed with the Commission in accordance with the Special Tariff Rules for Contracts prescribed in these paragraphs.
- (3) All contracts and amendments shall be of a size not less than 8 by 10 1/2 inches not greater than 8 1/2 by 14 inches; all contract summaries and supplements shall be of a size not less than 8 by 10 inches nor greater than 8 1/2 by 11 inches; any amendment to a contract shall be the same size as the contract and any supplement to a summary shall be the same size as the summary; all must be clear, legible and on durable paper.

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

(Rule 1220-3-1-.52, continued)

**1220-3-1-.53 FILING AND AVAILABILITY OF CONTRACT, CONTRACT AMENDMENTS, CONTRACT SUMMARY, AND CONTRACT SUMMARY SUPPLEMENTS**

- (1) A railroad entering into a contract for railroad transportation services with one or more purchasers of rail service shall file the original and one copy of the contract and the original and two copies of the contract summary with the Commission's Transportation Rate Division.
  - (a) Contracts and contract summaries shall not be filed in the same packages with standard tariff filings.
  - (b) The confidential contract shall not be attached to the contract summary.
  - (c) The envelope or wrapper containing the contract and summary shall be marked "Confidential, Rail Contract."
  - (d) A contract and summary shall be accompanied by a transmittal letter identifying the submitted documents, and the name and telephone number of a contact person.
- (2) The contract filed under these rules will not be available for inspection by persons other than the parties to the contract and authorized Commission personnel, except by petition demonstrating a likelihood of succeeding on the merits of the complaint and that the matter complained of could not be proven without access to additional contract information. The Commission's action in any contract-disclosure matter, including a petition filed under this subparagraph is subject to limitations imposed by 5 U.S.C. Sec. 552 (b) and the Trade Secrets Act, 18 U.S.C. Sec. 1905.
  - (a) A contract and its summary filed under section 10713 may be labeled "Non confidential". Such a designation will permit the general public to inspect the entire contract.
- (3) The contract summary filed under these rules shall include the information specified in Rule 1220-3-1-.56 of this part. The contract summary shall be made available for inspection by the general public.
- (4) The contract summary filed under these rules shall not be required to be posted in any stations, but shall be made available from carriers participating in the contracts upon reasonable request.

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

**1220-3-1-.54 CONTRACT AND CONTRACT SUMMARY TITLE PAGES**

- (1) The title page of every contract and of every supplement shall show the following in the order named:
  - (a) In the upper right-hand corner, the contract number.
  - (b) In the center of the page, the issuing carrier's name, followed by the word "CONTRACT" in large print.
  - (c) Amendments to contracts shall also show, in the upper right corner, the amendment number.
  - (d) A solid one inch black border down the right side of the title page.
  - (e) Date of issue and date to be effective.
  - (f) The title page for every contract summary and supplement shall contain only the following information:

(Rule 1220-3-1-.54, continued)

1. In the upper right corner, the contract summary number.
2. In the center of the page, the issuing carrier's name, followed by the words "CONTRACT SUMMARY" in large print.
3. Date of issue and date to be effective.
4. In the center lower portion, the issuing individual's name and address.
5. Supplements to contract summaries shall also show, in the upper right corner, the supplement number.

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

#### **1220-3-1-.55 CONTRACT AND CONTRACT SUMMARY NUMBERING SYSTEM**

- (1) Each issuing carrier shall sequentially number the contract and contract summary it issues. The contract and contract summary identification number shall include the word "TN 'SC," the industry standard alphabet code for the issuing railroad (limited to four letters), the letter "C", and the sequential number, with each separated by a hyphen. The following is an example; the 357th contract filed by the Milwaukee Railroad would have the following tariff identification number : "TNPSC-MILW-C-0357."
- (2) Any amendment to a contract shall be reflected in a corresponding supplement to the contract summary. If the change in the contract is only in confidential matter, a statement to that effect Will be made in the supplement.
- (3) At the carrier's option, the carrier's tariff publishing offices may reserve blocks of numbers if tariffs are issued from different departments- An index to the blocks of reserved numbers shall be filed with the Commission.
- (4) Contract amendments and contract summary supplements shall be sequentially numbered.

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

#### **1220-3-1-.56 CONTENT OF CONTRACT SUMMARY; FORMAT**

- (1) Contract summaries for agricultural commodities, forest products or paper shall contain the following terms in the order named.
  - (a) Name(s) of the participating carrier(s). A list, alphabetically arranged, of file corporate names of all Carriers that are parties to the contract plus their addresses for service of complaints.
  - (b) The commodity or commodities to be transported under the contract.
  - (c) The origin station(s) and destination station(s), including specific port(s) (if applicable).
  - (d) The duration of the contract.
  - (e) Rail data by number of dedicated cars, or, at the carrier's option, car days:
    1. by major car type used to fulfill the contract or contract options:

(Rule 1220-3-1-.56, continued)

- (i) Available and owned by the carriers listed in (I) above, will) average number of bad-order car identified.
  - (ii) Available and leased by the carriers listed in (I) above, with average number of bad-order car identified.
  - (iii) (optional) on order (for ownership or lease), along with delivery dates; and
  - (iv) In the event a complaint is filed involving common carrier obligation and carrier furnished cars, the carrier(s) shall immediately submit to the Commission and the complainant additional data on cars used to fulfill the challenged contract. Data shall include (by major car type used to fulfill the contract);
    - (I) total bad car orders;
    - (II) assigned car obligations; and
    - (III) free running cars.
- 2. In addition to (A) (i) if agricultural commodities (including forest products and paper), a certified statement by the participating rail carrier/carriers:
  - (i) that the cumulative equipment total for all contracts does not exceed 40 percent of the capacity of the rail carrier's owned and leased cars by applicable major car type, and
  - (ii) in the case of an agricultural shipper which originated an average 1,000 cars or more per year during the prior 3-year period by major car type, that the equipment used does not exceed 40 percent of the rail carrier's owned or leased cars used on the average by that shipper during the previous 3 years.
- 3. Rail car data need not be submitted if:
  - (i) the shipper furnished the rail cars, unless the cars are leased from the carrier; or
  - (ii) the contract is restricted to certain services which do not entail car supply
- (f) Rates and charges. Identification of base rates or charges, movement type (e.g. single car, multiple car, unit train), the minimum annual volume, and a summary of escalation provisions.
- (g) Special features. Identification of existence (but not fire terms or amount) of special features such as transit time commitments, guaranteed car supply, minimum percentage of traffic requirements, credit terms, discount, etc.
- (2) Contract summaries for other commodities or services not involving a port shall contain the information required in paragraphs (a), (1), (2), (4), (5), of this rule. Paragraph (a) (7), Special features, shall be applicable to the extent that service requirements are placed in the contract.
- (3) Contract summaries for other commodities or services involving a port shall contain the information required in paragraphs (a), (1), (2), (4), (5), (6) and (7) of this rule. In addition, the port shall be named and the tariff mileage (rounded to the nearest 50 miles) shall be disclosed (or, at the contracting parties' option, the origin and destination shall be specified). The required information shall be disclosed for each movement involving multiple origins/destination.

(Rule 1220-3-1-.56, continued)

- (4) Formal. The contract summary and supplements shall enumerate and have each item completed. Where the item does not pertain to the contract or amendment, the item "Not Applicable" ("NA") shall be used.

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

#### **1220-3-1-.57 AVAILABILITY OF CONTRACT SUMMARY**

Copies of contract summaries shall be available from the Commission. Copies of contract summaries shall also be available from carriers participating in the contract.

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

#### **1220-3-1-.58 STATUTORY NOTICE**

All filed contracts (and amendments) and contract summaries (and supplements) shall provide 30 days notice to the public as required by 49 U.S.C. Sec. 10713 (e).

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

#### **1220-3-1-.59 EXEMPTION OF JURISDICTION**

From time to time the Interstate Commerce Commission, Pursuant to 49 U.S.C. Sec. 10505, may exempt certain classes of rail traffic from interstate regulation. Such classes that are exempt by the Interstate Commerce Commission will also be exempt for Tennessee Public Service Commission.

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.

### 1220-3-1-.60 STATEMENT OF MONETARY ADJUSTMENT

## Statement of Monetary Adjustment

Claim of \_\_\_\_\_ under decision of \_\_\_\_\_  
the Tennessee Public Service Commission in Docket No. \_\_\_\_\_.

\_\_\_\_\_ Date of shipment.  
 \_\_\_\_\_ Date of delivery or tender of delivery.  
 \_\_\_\_\_ Date charges were paid.  
 \_\_\_\_\_ Car initials.  
 \_\_\_\_\_ Car number.  
 \_\_\_\_\_ Origin.  
 \_\_\_\_\_ Destination.  
 \_\_\_\_\_ Route.  
 \_\_\_\_\_ Commodity.  
 \_\_\_\_\_ Weight.  
 \_\_\_\_\_ Rate.  
 \_\_\_\_\_ Amount.  
 \_\_\_\_\_ Rate.  
 \_\_\_\_\_ Amount.  
 \_\_\_\_\_ Refund (or monies due) on basis of Commission's decision.  
 \_\_\_\_\_ Charges paid by (1).

Claimant hereby certifies that this statement includes claims only on shipments covered by the findings in the docket above described and contains no claim for refund (or monies due) previously filed with the Commission by or on behalf of claimant or, so far as claimant knows, by or on behalf of any person, in any other proceedings, except as follows: (here indicate any exceptions, and explanations thereof).

\_\_\_\_\_  
(Claimant)

By \_\_\_\_\_

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Date)

Total amount of refund (or monies due) \$ \_\_\_\_\_. The undersigned hereby certified that this statement has been checked against the records of this company and found correct.

Date \_\_\_\_\_ Concurring (2) In: \_\_\_\_\_  
 Company, Defendant Collecting Carrier, Defendant (3)

By \_\_\_\_\_, Auditor. By \_\_\_\_\_, Auditor.

- (1) Here insert name of person paying charges in the first instance, and state whether as consignor, consignee, or in other capacity.
- (2) For concurring certificate in case the collection carrier is not a defendant.
- (3) If not a defendant, strike out the word "Defendant".

**Authority:** T.C.A. §65-2-102. **Administrative History:** Original rule filed July 18, 1983; effective October 14, 1983.